

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MALLORY BEARD,

Plaintiff,

v.

Case No: 12-10726

THE AUTO CLUB INSURANCE
ASSOCIATION,

Hon. Nancy G. Edmunds

Defendant.

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**CONSENTED-TO MOTION TO DISPENSE WITH LOCAL RULE 83.20(f)
FOR APRIL 30, 2014 HEARING**

Defendant Auto Club Insurance Association (“Auto Club”), by and through its undersigned counsel, hereby moves this Court to dispense with the requirement of Local Rule 83.20(f) that “[l]ocal counsel must attend each scheduled appearance on the case unless the court.” In support of its motion, Auto Club relies on the following:

1. E.D. Mich. Local Rule 83.20(f) provides that “[a] member of the bar of this court who appears as attorney of record in the district court and is not an active member of the State Bar of Michigan must specify as local counsel a member of the bar of this court with an office in the district,” and that “[l]ocal counsel must attend each scheduled appearance on the case unless the court, on its own motion or on motion or request of a party, dispenses with the requirement.”

2. Counsel of record in this case, Elizabeth Hardy, is an active member of the State Bar of Michigan. The undersigned, Thomas J. Davis, is admitted to the bar of the Eastern District of Michigan and the bar of the District of Columbia, but his application for admission to the Michigan Bar remains pending.

3. Mr. Davis plans to appear in Court on April 30, 2014 for the hearing on Plaintiff’s Motion to Review Taxed Bill of Costs, without Ms. Hardy’s attendance. Although he is not “counsel of record,” and thus on its face Rule 83.20(f) may not apply, Mr. Davis asks out of an abundance of caution that this

Court dispense with the requirement that local counsel (*i.e.*, Ms. Hardy) appear in Court with Mr. Davis at the April 30, 2014 hearing.

4. On April 16, 2014, undersigned counsel spoke with Heidi T. Sharp, counsel for Plaintiff, and Ms. Sharp stated that she consents to the current motion.

WHEREFORE, Auto Club requests that the Court enter an order dispensing with any applicable requirement that Mr. Davis appear at the April 30, 2014 hearing with an attorney admitted to the State of Michigan Bar.

Respectfully submitted,

KIENBAUM OPPERWALL
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Dated: April 16, 2014

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**BRIEF IN SUPPORT OF CONSENTED-TO MOTION TO DISPENSE
WITH LOCAL RULE 83.20(f) FOR APRIL 30, 2014 HEARING**

CONTROLLING OR MOST APPROPRIATE AUTHORITIES

Cases

Laborer's Pension Trust Fund-Detroit & Vicinity v. Altchem Env'tl. Servs.,
2014 U.S. Dist. LEXIS 37288, (E.D. Mich. Mar. 21, 2014.).....1

Rules

E.D. Mich. Local Rule 83.20(c)(1).....1, 2

ARGUMENT

Under the Eastern District of Michigan local rules, an attorney admitted to practice in any state or the District of Columbia is eligible for admission to the Eastern District of Michigan Bar. E.D. Mich. Local Rule 83.20(c)(1). Admission to the Eastern District Bar allows an attorney to “practice in this court,” which includes the ability to “appear in open court.” E.D. Mich L.R. 83.20(a),(b). Rule 83.20(f)(1) provides, however, that “a member of the bar of this court who appears as attorney of record in the district court and is not an active member of the State Bar of Michigan must specify as local counsel a member of the bar of this court with an office in the district.” Rule 83.20(f)(2), in turn, provides that “Local counsel must attend each scheduled appearance on the case unless the court, on its own motion or on motion or request of a party, dispenses with the requirement.”

The few cases interpreting Rule 83.20(f) focus on the requirement that an out-of-state “counsel of record” must designate local counsel. *See, e.g., Laborer’s Pension Trust Fund-Detroit & Vicinity v. Altchem Env’tl. Servs.*, 2014 U.S. Dist. LEXIS 37288, at *2 (E.D. Mich. Mar. 21, 2014.) The thrust of that requirement is to ensure that one attorney in the case be available in the district to attend short-notice hearings, communicate with the court, and familiarize counsel of record with local rules. *Id.* On its face, the rule itself does not appear to apply to the situation where counsel of record *is* the “local counsel,” and her co-counsel at the

same firm, not yet admitted to the Michigan bar but admitted in the Eastern District of Michigan, wishes to appear in open court. Nonetheless, it is possible that Rule 83.20(f)(2) applies to such a situation, and if so, the requirement for local counsel should be waived here.

None of the concerns underlying Rule 83.20(f) are present, and the Court should exercise its authority under Rule 83.20(f)(2) to “dispense with” the local counsel appearance requirement for the upcoming hearing. Undersigned counsel is admitted to practice in this Court, and the local rules contemplate that admission to the district allows *all* lawyers, not just those currently admitted in Michigan, the ability to appear in court. He is present in the district, and has the ability to appear on short notice for hearings.¹ The rules applicable to this case, and the pending motion, are entirely federal—not state—and undersigned counsel has familiarized himself with Eastern District rules. The motion to be heard on April 30, 2014 involves a discrete issue regarding an award of bill of costs; undersigned counsel authored Defendant’s brief on that issue, and is prepared to argue the motion himself. Finally, Plaintiff’s counsel consents to the request.

¹ Jay Boger, Ms. Hardy’s previous co-counsel, no longer practices with Ms. Hardy’s law firm, and thus he is unavailable to argue the upcoming motion.

CONCLUSION

Defendant respectfully requests that, to the extent Local Rule 83.20(f)(2) is applicable here, that the Court dispense with the requirement that Mr. Davis must appear in open court with “local counsel.”

Respectfully submitted,

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Dated: April 16, 2014

CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2014, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to all counsel of record.

s/Thomas J. Davis

Thomas J. Davis (D.C. #490033)

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